

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

1  
2  
3 IN THE MATTER OF THE ISSUANCE OF )  
 4 A SUBSTANTIAL DEVELOPMENT PERMIT )  
 5 TO CONDOMINIUM BUILDERS, INC. BY )  
 6 THE CITY OF SEATTLE )  
 7 MARGARET COUGHLIN, )  
 8 )  
 9 ) Appellant, )  
 10 )  
 11 ) v. )  
 12 )  
 13 ) CITY OF SEATTLE and CONDOMINIUM )  
 14 ) BUILDERS, INC., )  
 15 ) Respondents. )  
 16 )  
 17 )  
 18 )

SHB No. 77-18  
FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

A formal hearing was held in this matter before the Shorelines Hearings Board, W. A. Gissberg presiding, Chris Smith, Dave J. Mooney, Robert E. Beaty, William A. Johnson, and Reid Shockey on August 10 and 11, 1977 in Seattle, Washington.

Appellant Margaret Coughlin was represented by J. Richard Aramburu; Peter L. Buck appeared for respondent permittee Condominium Builders, Inc.; Assistant Corporation Counsel Ross Radley represented respondent

1 City of Seattle.

2 Having heard the testimony, having examined the exhibits, having  
3 read trial memoranda submitted by counsel, the Shorelines Hearings  
4 Board makes the following

5 FINDINGS OF FACT

6 I

7 The substantial development permit at issue in this appeal  
8 authorizes the construction of a forty-unit condominium at 3100-3124  
9 West Commodore Way on the shoreline of the Salmon Bay Waterway.

10 The proposed development is one building 280 feet long by 65 feet  
11 deep with a height of 35 feet above the average grade of the sloping  
12 lot. (The roof level rises approximately 16 feet above West Commodore  
13 Way.) The stucco structure will contain three stories, a basement  
14 level, and an underground garage with sixty parking spaces. At the  
15 permittee's expense, ten to twelve additional on-street parking  
16 spaces will be created on the right of way for West Commodore Way.  
17 An accessory swimming pool waterward of the condominium is also  
18 authorized.

19 A five foot walkway to the east of the unit will continue for  
20 approximately 300 feet along the shoreline and provide regulated public  
21 access. At the hearing before this Board, the permittee agreed to  
22 construct a sidewalk the entire length of the subject property on the  
23 north side of West Commodore Way.

24 II

25 The legal description of the property to be developed under the  
26 instant permit includes both the site for the proposed condominium

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 and the adjoining land now occupied by the Lockhaven Marina. The  
2 entire four-acre parcel is owned by Lockhaven Marina, Inc. with the  
3 applicant Condominium Builders, Inc. having an option to purchase  
4 the condominium site. After the project is completed, the Lockhaven  
5 Marina, Inc. will continue to have an interest therein by virtue of  
6 its joint venture arrangement with Condominium Builders, Inc. The  
7 property is to be subdivided subsequent to the issuance of the  
8 substantial development permit with the eastern half (hereafter the  
9 "marina site") and the waterfront portion of the western half of the  
10 property (hereafter the "condominium site") retained by the marina.

### 11 III

12 The property lies within the Magnolia Community in an area  
13 designated urban stable (US) under the Seattle Master Program. The  
14 marina site is zoned general industrial (IG) and the condominium site  
15 is currently zoned multi-family residential (RM).

16 The condominium site is directly southeast of the Hiram D.  
17 Chittenden Locks. To the northwest of the site is the Army Corps of  
18 Engineers' fish ladder. Immediately west of the site and south  
19 across West Commodore Way are three condominium buildings having a  
20 total of seventy-six units. The instant property is the last  
21 undeveloped lot within the RM zone in this area. Further to the  
22 west of the subject site is a single family residential community  
23 with approximately 200 homes. Within a block of the site to the  
24 west is Commodore Park, a development of the City of Seattle and  
25

1 the Corps providing a 5.3 acre "passive park" for fish ladder access.  
2 Discovery Park lies to the west beyond the residential community.

3 The arterial serving this area is West Commodore Way, a two-way,  
4 two lane "neighborhood collector" with a 24-foot paved width and a  
5 right of way of 60 feet.

#### 6 IV

7 Application for a substantial development permit for construction  
8 of the "Lockhaven Condominium" was filed by Condominium Builders, Inc.  
9 on January 17, 1977. A proposed Declaration of Non-Significance  
10 was issued by the City of Seattle's Department of Community Development  
11 on March 23, 1977; a Final Declaration issued on April 13, 1977.  
12 This threshold determination was appealed to the City's hearings  
13 examiner by the appellant in this matter on May 31, 1977. Following  
14 a public hearing on June 1, 1977, the hearings examiner found that  
15 the project would not have a significant effect on the environment  
16 and affirmed the decision of the Department of Community Development  
17 on June 16, 1977.

18 On April 29, 1977, prior to the processing of the SEPA appeal,  
19 a substantial development permit was granted to the applicant subject  
20 to the following conditions:

- 21 1) That prior to issuance of a building permit for the  
22 proposed condominium, the following be accomplished:
  - 23 a. Filing for record with the County Auditor of a  
24 scenic easement, granted to the City of Seattle,  
25 which scenic easement is to be similar in content  
26 to the Declaration of Covenants, Conditions and  
Restrictions dated April 6, 1977, a copy of which  
is attached hereto as Exhibit A, and which is to  
be in a form acceptable to the Corporation Counsel  
of the City of Seattle.

1 b. Filing for record with the County Auditor of an  
2 approved short subdivision, as provided in  
3 Ordinance 105636, dividing the property sub-  
4 stantially as indicated in the approved plans;  
5 such short subdivision to include a permanent  
6 easement for pedestrian public access  
7 substantially as shown on sheet 4 of the approved  
8 plans.

9 2) That the applicant, with the consent of the Seattle  
10 Board of Public Works, improve the West Commodore  
11 Way right-of-way for public parking adjacent to the  
12 proposed project, substantially as shown on sheet 4  
13 of the approved plans. Failure to obtain Board  
14 authorization, in spite of good faith efforts on the  
15 part of the applicant, shall not void the permit.

16 3) That drains be installed to control storm water runoff  
17 from the site, such storm drainage system to include  
18 oil separators and siltation constrols [sic] on all  
19 storm drains emptying into the public waters.

20 V

21 From the permit as conditioned appellant filed a request for  
22 review on May 27, 1977 citing four bases for vacation of the permit:  
23 (1) the condominium unit at this location is an inappropriate use of  
24 the shoreline, (2) the proposal fails to meet the view corridor  
25 requirements of the master program, (3) in reducing available parking  
26 for the marina site, the proposal violates the Seattle Zoning Code,  
27 and (4) an Environmental Impact Statement should have been prepared  
28 for the project.

29 VI

30 RCW 90.58.020 provides

31 Permitted uses in the shorelines of the state shall be  
32 designed and conducted in a manner to minimize, insofar as  
33 practical, any resultant damage to the ecology and environment  
34 of the shoreline area and any interference with the public's  
35 use of the water.

36 It is within this context that appellant's concerns regarding the

37 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 project's alleged aggravation of existing parking and traffic problems  
2 were expressed.

3 The project will generate a daily average of 280 vehicular trips.  
4 Road capacity for West Commodore Way, assuming some parking on the  
5 curbs of the arterial, is estimated to be 4,000 vehicles per day. No  
6 official traffic counts have been taken by the City as the present  
7 use of the road is judged by the traffic engineer to be 1,000 vehicles  
8 per day, well below the capacity figure.

9 The increase in local traffic experienced over the past several years  
10 will continue as a result of the government facilities made available to  
11 the public in the area, particularly the Locks, the fish ladder, and  
12 the soon to be completed Commodore Park. These attractions cause  
13 car and bus congestion to the west of the project site; however, it  
14 is expected that over ninety percent of the condominium traffic will  
15 travel east on West Commodore Way. Similarly, current and future demands  
16 for parking space will be concentrated west of the project site. There  
17 is no apparent parking problem at either the condominium site or the  
18 marina site at this time. With the provision of 60 parking spaces on-site  
19 (one and one-half times the zoning code requirements) and the creation of  
20 ten to twelve on-street parking spaces, the development should not have  
21 an adverse impact on parking in the area.

## 22 VII

23 At the subject site, the Seattle Master Program requires a view  
24  
25  
26

1 corridor of 35 percent.<sup>1</sup> In determining that the project met this  
2 requirement, the Department of Community Development assessed the views  
3 available on both the condominium site and the marina site. Further,  
4 in making such assessments, the Department calculated partial as well  
5 as clear view corridors.

6 In its calculation, the denominator for the Department was not  
7 the frontage on West Commodore Way, 775 feet, but rather the average  
8 lot width of the property, 690 feet, requiring a view corridor of  
9 241 feet. Upon construction of the instant project, clear views of  
10 the waterway across the entire subject property would equal approximately  
11 210 feet. Additionally, on the marina site, partial views of the  
12 Waterway and the Ballard shoreline are available over the existing  
13 covered moorages because of the steepness of the lot (West Commodore  
14 Way is 50 feet above the Waterway). Thus, it was calculated that the  
15 total open and partial view available across the entire property was  
16 approximately 400 feet. On these facts, the Department determined  
17 that upon completion of the instant project the view corridor would  
18 be "the equivalent of" 35 percent. To ensure that no further impair-  
19 ment of view occur on the property, the permit was conditioned  
20 to require the filing of a scenic easement. (See Finding of Fact IV  
21 supra.)

---

23 1. 21A.35 Bulk Regulations - Yards, View Corridors and Residential  
24 Setbacks, Table 2.B.3, p. 10.

25 21A.155 Definitions "U through Z" ". . . VIEW CORRIDOR: An open  
26 air space on a lot affording a clear view across the lot to the water from  
the abutting street." p. 60.

VIII

The Seattle Zoning Code, Section 5.2, provides:

No . . . legally established offstreet parking or loading area . . . shall be reduced in area or dimension below the minimum required by this Ordinance, nor shall any . . . legally established offstreet parking or loading area less than the minimum required by this Ordinance be further reduced . . . .

The Zoning Code requires that a marina provide one parking space for every two slips. The Lockhaven Marina has approximately 100 slips (51 covered moorages, 18 open moorages, and lengths of open docks which can accommodate over 30 boats depending upon size). Thirty-six lined parking spaces and pavement for an additional 10 to 20 cars exist on the marina site. Sporadic parking use of a small gravel area on the condominium site is made by marina patrons. The marina has never sought nor received any official authority for use of this area as marina parking. A few additional parking spaces are required for occupants of the small office building existing on the marina site.

Any Conclusion of Law hereinafter stated which may be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Shorelines Hearings Board comes to these

CONCLUSIONS OF LAW

1

In reviewing the validity of a substantial development permit, the Shorelines Hearings Board evaluates the consistency of the proposed project with the policies and provisions of the Shoreline Management Act (SMA) the Department of Ecology guidelines and regulations issued pursuant thereto, and the respective master program. The project as conditioned by the City of Seattle and this Order is consistent with

1 these criteria.

2 II

3 While not identified as a preferred use in the SMA, multiple  
4 family dwellings can be a permitted use on the shoreline. However, the  
5 Shorelines Hearings Board has ruled that under RCW 90.58.020 a permit  
6 can be vacated or conditioned if the design or density of the develop-  
7 ment is damaging to the shoreline environment. In the instant matter  
8 any traffic congestion which may now exist will not be measurably  
9 aggravated by the development. Further, the permittee must take  
10 specific mitigative measures to minimize any parking demands generated  
11 by the condominium.

12 With the guarantee of regulated public access imposed under the  
13 permit, the condominium development is an appropriate use of the  
14 Seattle shoreline and does not violate the policies of the SMA.

15 III

16 The use of the marina site area of the subject property to increase  
17 the amount of potential view corridors available to meet the master  
18 program requirement is consistent with both the master program and good  
19 planning. Whether the relationship between Condominium Builders, Inc.  
20 and Lockhaven Marina, Inc. is properly characterized as a joint venture,  
21 an agency coupled with an interest, etc. is of no legal or practical  
22 consequence in this case. The development authorized under the instant  
23 permit for the entire property, marina site as well as condominium site,  
24 is limited to the single condominium unit in which the present land  
25 owner will have an interest upon its completion. The filing of the  
26 Declaration of Covenants, Conditions, and Restrictions wherein

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 Condominium Builders, Inc. and Lockhaven Marina, Inc. collectively are  
2 the Declarant assures that any future development on the marina site  
3 will not further reduce the view corridors now available. Neither the  
4 purpose of the view corridor requirement nor the public interest is  
5 prejudiced by such an arrangement.

6 It is unfortunate that the master program itself gives little  
7 guidance to the Shorelines Hearings Board, the City of Seattle admin-  
8 istrative staff, or the public with regard to the view corridor  
9 percentage requirement. A general written formula which would retain  
10 administrative flexibility for such a calculation would mitigate against  
11 confusion and capricious decision-making. However, the manner in which  
12 the new corridor was assessed in this instance appears consistent with  
13 the underlying purpose of the requirement and the result is not violative  
14 of any provision of the SMA or the DOE regulations promulgated pursuant  
15 thereto. Under these circumstances, the Board will give deference to  
16 the local agency's reasonable interpretation of an ambiguous provision in  
17 its own master program. In addition, although not argued by the parties,  
18 the master program definition of "view corridor" appears to protect a  
19 view across the lot to the water. With this emphasis in mind, clear  
20 views to the water would exist from West Commodore Way across the entire  
21 marina site.

#### 22 IV

23 Parking at the Lockhaven Marina has never been reviewed by the  
24 City of Seattle for its compliance with the Seattle Zoning Code.  
25 Facts presented to the Board in this regard were too imprecise to  
26 conclude with any certainty that the spaces available for the uses  
27 which would continue at the site fall short of Code requirements.

FINAL FINDINGS OF FACT,

1 Even if the facts did establish that the marina failed to meet Code  
2 requirements, this in itself would not transform the occasionally used  
3 gravel area on the condominium site into a "legally established off  
4 street parking . . . area" protected under the Code. The testimony of  
5 a city planner that in Seattle an occasionally used area never officially  
6 recognized by the City did not constitute a "legally established off  
7 street parking . . . area" under the Code was not controverted.

8 V

9 The Shorelines Hearings Board does have full de novo review of a  
10 project's consistency with the Shoreline Management Act. However, the  
11 Board's jurisdiction with regard to SEPA allegations is derived not  
12 from the SMA but from the State Environmental Policy Act (SEPA) which  
3 provides:

14 . . . In any action involving an attack on a determination  
15 by a governmental agency relative to the requirement or the  
16 absence of the requirement, or the adequacy of a "detailed  
17 statement," the decision of the governmental agency shall  
be accorded substantial weight. RCW 43.21C.090. (Emphasis  
added.)

18 While the Board may, in its discretion, consider evidence in  
19 addition to that which was before the local agency, it nonetheless  
20 must accord the decision of such a governmental agency substantial  
21 weight. Upon review of all the facts presented to the Board in this  
22 case, the Board concludes that the decision of the Department of  
23 Community Development to issue a Final Declaration of Non Significance  
24 for the instant project was not clearly erroneous.

25 Any Finding of Fact which should be deemed a Conclusion of Law  
.6 is hereby adopted as such.

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 Therefore, the Shorelines Hearings Board issues this

2 ORDER

3 The substantial development permit granted to Condominium Builders,  
4 Inc. by the City of Seattle is remanded to the City of Seattle for  
5 reissuance subject to the following additional conditions, and as so  
6 conditioned is affirmed:

7 1. The Declaration of Covenants, Conditions, and Restrictions  
8 dated April 6, 1977, shall be amended to delete (a) the proviso,  
9 "unless . . . manner" under "Preservation of Views," page 1, and (b)  
10 the entire section "Amendment and Termination," page 2.

11 2. The permittee shall construct a pedestrian sidewalk on the north  
12 side of West Commodore Way along the entire length of the subject  
13 property (775 feet).

14 DONE this 7<sup>th</sup> day of September 1977

15 SHORELINES HEARINGS BOARD

16 W. A. GISSBERG  
17 W. A. GISSBERG, Chairman

18 Robert E. Beatty  
19 ROBERT E. BEATTY, Member

20 William A. Johnson  
21 WILLIAM A. JOHNSON, Member

22 Dave J. Mooney  
23 DAVE J. MOONEY, Member

24 Reb Shockey  
25 REB SHOCKEY, Member

26 Chris Smith  
27 CHRIS SMITH, Member

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER